

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:)

Capitol Ventures I, LP)

t/a Diversite)

Renewal Application for a Retailer's)

License Class "CR" – at premises)

1526 14th Street, N.W.)

Washington, D.C.)

Applicant)

Case No. 32862-99021P

BEFORE: Roderic L. Woodson, Esquire, Chairperson
Vera Abbott, Member
Ellen Opper-Weiner, Esquire, Member
Audrey Thompson, Member
Judy Moy, Member
Charles Berger, Member

ALSO PRESENT: Fred P. Moosally, Assistant Corporation Counsel
Legal Advisor to the Board

Alan Mendelsohn, Esquire, and Andrea Bagwell, Esquire
on behalf of the Applicant

Douglas Fierberg, Esquire, on behalf of Protestant Shirley Neff
Helen Kramer, David Stephens, and Leslie Miles, on behalf of
Protestant ANC 2F

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER**

1. This application, filed by Capitol Ventures I, LP, t/a Diversite ("Applicant"), to renew a Retailer's License Class "CR" at premises 1526 14th Street, N.W., Washington D.C., initially came before the Alcoholic Beverage Control Board ("Board") for a roll call hearing on December 9, 1998. It was determined that a timely protest was filed pursuant to section 14(b) of the District of Columbia Alcoholic Beverage Control Act ("the Act"), approved January 24, 1934, 48 Stat. 327, D.C. Code § 25-115(b) (1996), by Shirley Neff, on behalf of the Q Street Association, and Advisory Neighborhood Commission ("ANC") 2F. The protest issue is that the

Applicant's establishment adversely affects the peace, order, and quiet of the neighborhood.

2. The case came before the Board for public protest hearings on June 23, 1999, August 4, 1999, and August 11, 1999.

3. A written letter dated August 2, 1999 from Chief of Police Charles H. Ramsey -- discussed at the August 4, 1999 protest hearing -- requesting revocation of the establishment's liquor license pursuant to his authority under D.C. Code § 25-118(f)(2) resulted in an extensive separate summary suspension hearing on August 18, 1999, where designated representatives of the Metropolitan Police Department ("MPD") and the Applicant appeared before the Board. At the summary suspension hearing the Board took the following action: 1) required the establishment to close at midnight on Fridays and Saturdays; 2) required the establishment to follow the 180-person occupancy limit as set forth in its voluntary agreement; and (3) scheduled a show cause hearing -- which occurred on November 10, 1999 -- to determine whether the establishment's liquor license should be revoked.

4. On September 22, 1999 the Applicant appeared before the Board at a status hearing requesting a restoration of the establishment's hours of operation on Fridays and Saturdays. The Board agreed to reinstate the establishment's hours of operation on Fridays and Saturdays on a temporary basis until the show cause hearing. However, the Board prohibited the establishment from having live music, which is not permitted under its license. The Board also required the licensee to file a corrective action plan with the Board and MPD. Additionally, the Board adopted the establishment's decision to raise its age limit for admission from 18 to 21 years of age and to implement a dress code prohibiting jeans, boots, sneakers, and athletic wear. A brief hearing took place on October 27, 1999 where the Office of Corporation Counsel -- in its appearance on behalf of the District of Columbia -- was advised to obtain comment from MPD on the establishment's corrective action plan.

5. On November 10, 1999 a show cause hearing was held to allow MPD and the Applicant to comment on the corrective action plan and to determine whether the Applicant's license should be revoked. At the November 10, 1999 hearing, MPD and its representative stated that they were not aware of any recent incidents at the establishment. Additionally, testimony revealed that the Board's restrictions -- including not allowing the establishment to have live music as prohibited under its license -- had been effective in minimizing any disruption or any negative effects that the establishment has had on the community. As a result, the Board on November 10, 1999 reinstated the establishment's hours of operation on Friday and Saturday nights. However, the Board kept the remaining restrictions from the August 18, 1999 summary suspension hearing and the September 22, 1999 hearing and determined to retain jurisdiction over the establishment through the show cause proceeding -- in monitoring the operations of the establishment and criminal activity in the area. Thus, the Board recessed its November 10, 1999 show cause hearing to March 8, 2000 to receive additional testimony and evidence. At the March 8, 2000 hearing the representative from MPD stated there had been no recent criminal activity or problems at the establishment and asked that the existing restrictions on the establishment remain in place. At the conclusion of the March 8, 2000 show cause hearing, the Board again recessed the proceeding to June 7, 2000 to allow the Board to continue monitoring

the operations of the establishment and criminal activity in the area.

6. Both parties filed Proposed Findings of Fact and Conclusions of Law, however, the Applicant's submission was not filed timely and was not accepted. On March 29, 2000 the Board issued a proposed order as required by D.C. Code § 1-1509(d)(1999) since a majority of the Board members intending to render the final order did not personally hear the evidence at the June 23, 1999, August 4, 1999, and August 11, 1999 protest hearings. The Protestants filed exceptions to the Board's proposed order. A hearing on the Protestants filed exceptions was held before the Board pursuant to D.C. Code § 1-1509(d) on July 26, 2000.

7. The Board having considered the evidence, the testimony of the witnesses, and the documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

8. The establishment has a Class "CR" Retailer's License that was issued for the license period of April 1, 1998 through March 31, 2000 and is located at 1526 14th Street, N.W., Washington D.C. in an area zoned CR-02. (Tr. 6/23/99 at 26, 29; Tr. 8/11/99 at 148; Board's Exhibit No. 1 at 1, 11.) The area contains a high volume of ABC licensed establishments. (Tr. 6/23/99 at 29.) To the left of the establishment on 14th Street is Metro Club, an establishment with a Class "CR" License located off Miller Street that operates as a restaurant and bar. (Tr. 6/23/99 at 28-29; Tr. 8/4/99 at 23; Tr. 8/11/99 at 65.) In the next block is the Eleventh Hour off Church Street, another establishment with a Class "CR" license. (Tr. 6/23/99 at 28-29; Tr. 8/4/99 at 23; Tr. 8/11/99 at 65.) Four blocks up on the north side is the ABC establishment Black Cat. (Tr. 6/23/99 at 29.) Other ABC establishments exist off the main corridor of 14th Street and U Street. (Tr. 6/23/99 at 29.) The establishment caters to a diverse clientele of black, white, latino, gay, straight, and lesbian. (Tr. 8/11/99 at 57-59, 76-77.) It serves continental and American style cuisine and offers poetry readings, live music, cultural exhibits, and salsa night. (Tr. 8/4/99 at 67, 74; Board's Exhibit No. 1 at 3.) The establishment has a certificate of occupancy for the use of a restaurant and public hall issued on October 8, 1998 for a seating capacity of 350 for the first and second floor and the mezzanine area. (Tr. 6/23/99 at 36, 46; Board's Exhibit No. 1 at 11.)

9. Advisory Neighborhood Commission ("ANC") 2F's written letter from Ms. Helen Kramer dated November 13, 1998 raises peace, order, and quiet as the grounds for its protest. No specific issues of peace, order, and quiet are raised by the letter. (See Board's protest file.) At the November 4, 1998 ANC meeting with a quorum present and full notice in accordance with ANC regulations, ANC 2F voted 3 to 1 to 1 to protest the renewal of the establishment on the same grounds that it negatively impacts on the peace, order, and quiet of the neighborhood. (Tr. 8/11/99 at 130, 136-138.) The ANC 2F minutes from the November 4, 1998 meeting were approved at a subsequent meeting. (Tr. 8/11/99 at 138, 144.) As a result, ANC 2F is entitled to great weight pursuant to D.C. Code § 1-261(d)(1999).

10. With regard to the establishment's hours of operation, question 16 of the establishment's Premise and Business Information Sheet part of its application states that the

Applicant's hours of operation are 11:00 a.m. until 2 a.m. (Tr. 8/4/99 at 298.) The Food Statement part of the establishment's application contains conflicting information -- which the Applicant provides in questions 6 and 7 in listing the hours for each individual day -- that its hours of operation are Sunday through Thursday 10 a.m. through 2 a.m. and Friday and Saturday 10 a.m. through 3 a.m. (Tr. 6/23/99 at 30, 39-40, 42-43; Tr. 8/4/99 at 299.) Both parts of the application were signed on the same date.

11. With regard to the hours of operation of the establishment, Mr. Toure who resides in Arlington, Virginia and is the present co-owner of the establishment with Martin Mendelsohn testified that the establishment is open seven days a week 11 a.m. to 3 p.m., is closed from 3 p.m. to 4 p.m. and re-opens from 4 p.m. until 2 a.m. on weekdays, and 3 a.m. on weekends. (Tr. 8/11/99 at 105-106, 120-121.) Investigator Crystal Poindexter, of the Department of Consumer and Regulatory Affairs' Office of Compliance testified that, including weekends, she did not observe the establishment open past 2 a.m. (Tr. 6/23/99 at 44, 79.) Occasionally, the establishment may close around 12 a.m. on weekdays if business is slow. (Tr. 8/4/99 at 221, 223; Tr. 8/11/99 at 106.)

12. Both Investigator Poindexter and Mr. Seville Williams -- a promoter for the establishment -- who resides at 1012 S Street, N.W., identified Sunday night event advertisements for the establishment listing event hours as "7 p.m. until" with no closing hour. (Tr. 8/11/99 at 36; Protestants' Exhibits Nos. 1 and 3.) Mr. Williams, Mr. Toure and Mr. Eugene Winbush -- who resides at 1822 13th Street, N.W., and has been the director of security at the establishment for about four years -- testified that the establishment closes at 2 a.m. on Sundays and that the question mark is merely a marketing strategy used by establishments to get people to come to the establishment and does not mean that they will be open until 6 a.m. (Tr. 8/4/99 at 221-222; Tr. 8/11/99 at 36-37, 111.) Mr. Williams noted that his arrangement with the Applicant is for last call for his Sunday events to be around 1:25 a.m. or 1:30 a.m. with all patrons required to be out of the establishment by 2 a.m. (Tr. 8/11/99 at 37.) The 2 a.m. Sunday closing time for the establishment was confirmed by Mr. Winbush and Investigator Poindexter who observed the establishment close on Sunday by its legal closing time. (Tr. 6/23/99 at 59; Tr. 8/4/99 at 223.) Mr. Williams stated his Wednesday events also close by 2 a.m. (Tr. 8/11/99 at 38.)

13. As part of her investigation, Investigator Poindexter visited the establishment on Saturday, April 24, 1999; Saturday, May 1, 1999; Saturday, May 29, 1999; and Saturday, June 5, 1999. (Tr. 6/23/99 at 25, 31; Board's Exhibit No. 1 at 4-5.) She entered the establishment three times, on April 24, 1999, May 1, 1999 and June 5, 1999 visits. With regard to the establishment's procedure for selling alcohol, Ms. Poindexter observed wristbands on patrons' arms identifying them to bartenders as being over 21 years of age. (Tr. 6/23/99 at 34.) Additionally, she testified that on her four visits to the establishment she did not observe any alcoholic beverages being sold after its hours of operation as the establishment stopped serving alcohol on her visits at a quarter to two. (Tr. 6/23/99 at 37, 55.)

14. With regard to the establishment's operations as a restaurant, Investigator Poindexter stated that during her inspection of the premises she found the kitchen, the bathrooms, and the rest of the establishment to be in excellent condition and noted that the

establishment was always orderly and clean. (Tr. 6/23/99 at 31-32.) She stated the establishment employs approximately 20 people and has a cook whose name is Alhassane Toure. (Tr. 6/23/99 at 30, 34, 45, 78.) While inside the establishment, Inspector Poindexter saw menus on the table, but did not see food served nor did she see silverware or plates on the tables during her: (1) April 24, 1999 visit beginning at approximately 11 p.m.; (2) May 1, 1999 visit beginning at approximately 12:40 p.m.; and (3) June 5, 1999 visit beginning at approximately 11 p.m. (Tr. 6/23/99 at 44, 49, 79-83.) As a result, she noted that -- at a minimum -- three hours prior to the closing of the establishment at 2 a.m. no food was being served. (Tr. 6/23/99 at 80.) The Board did find, however, that nothing would inhibit or prevent the establishment from serving food during the late night dinner hour in compliance with the law given the kitchen's: (1) excellent condition, and (2) adequate amount of food stored in the refrigerator. (Tr. 6/23/99 at 112-113.) Additionally, Investigator Poindexter did observe the cook and dirty dishes in the establishment. (Tr. 6/23/99 at 45.)

15. Officer Terence Shirk, MPD, testified that he has seen people eating regularly in the establishment, including at dinnertime. (Tr. 8/4/99 at 54-55.) He testified that he did not see food being served at the establishment during his midnight tour of duty. (Tr. 8/4/99 at 60.) It did not come as a surprise to Officer Shirk that no one was eating dinner inside the establishment at midnight. (Tr. 8/4/99 at 63.) Officer Michael A. Wright, MPD, testified that during the early evening hours the establishment operates as a restaurant/bar where patrons eat and have a social drink. (Tr. 8/4/99 at 74, 80.) Officer Wright testified that later in the evening the establishment switches over to a club-like atmosphere. (Tr. 8/4/99 at 80.) Officer Wright has been a patron of the establishment in an off-duty capacity on several occasions and has eaten lunch and dinner at the establishment. (Tr. 8/4/99 at 80, 88-91, 96.) Officer Wright testified that the establishment serves good food. (Tr. 8/4/99 at 96.) Lieutenant Bridget Sickon, MPD, testified that she has eaten inside the establishment. (Tr. 8/4/99 at 128.)

16. Pamela Gail Watson, who resides in Baltimore, Maryland, testified she has been working at Jessup Elementary for three years. (Tr. 8/4/99 at 263.) She stated she has been to the establishment twice. Ms. Watson stated that the first time was six months ago on a weekend night. (Tr. 8/4/99 at 263-264.) She arrived around 10 p.m. or 10:30 p.m., did not observe any food being served, or any food or silverware on the tables. (Tr. 8/4/99 at 264-265.) She stated the lights were off, the establishment was a dance club atmosphere, and she did not see any food in the establishment during her stay of approximately two and one-half hours. (Tr. 8/4/99 at 265.)

17. Ms. Watson went to the establishment a second time on Friday, June 12, 1999 with her boyfriend to see DLG, a salsa band that interested her. (Tr. 8/4/99 at 266.) Ms. Watson arrived at the establishment at 9:30 p.m. and did not see any food being served during her time at the establishment. (Tr. 8/4/99 at 267-269.) Ms. Watson also did not see any silverware on the tables and was not provided with a menu. (Tr. 8/4/99 at 267-268.) Ms. Watson never attempted to order food in the establishment. (Tr. 8/4/99 at 274.)

18. Mr. Williams and Mr. Winbush testified that the kitchen normally stays open until around 11:00 p.m. (Tr. 8/4/99 at 224; Tr. 8/11/99 at 35.) Mr. Toure stated patrons from the

Woolly Mammoth theater are a big part of his business, and he is busy for dinner for two to four hours. (Tr. 8/11/99 at 94.) He stated that once patrons head to their show around 8 p.m. his dinner business slows down. (Tr. 8/11/99 at 95.) The full dinner menu is closed at 9:30 p.m. As far as a partial kitchen menu, the kitchen is open until around 11 p.m. (Tr. 8/4/99 at 224-225.) On Sundays, the establishment does not have a full dinner menu but serves some items including chicken wings and fries. (Tr. 8/4/99 at 223.)

19. Mr. Williams testified that he charges a fee of typically \$5 to \$7 for some of his events, others are free depending on the type of function. (Tr. 8/11/99 at 23-24.) He testified that food, primarily pre-made appetizers from the establishment, is served in conjunction with that charge and that a lighter version of the establishment's full menu is available for any patron desiring to purchase a meal. (Tr. 8/11/99 at 24, 35.)

20. With regard to the statutory 45% food requirement, the establishment's filed quarterly reports state that the 45% food requirement has been met. Specifically, the percentage of food sales for the four filed quarterly reports over the past year, beginning with the October 1, 1998 to December 31, 1998 quarterly report, until the last protest hearing date in August 1999 (the July 1, 1999 to September 30, 1999 quarterly period) were: 47.6% for October 1, 1998 to December 31, 1998; 48% for January 1, 1999 to March 31, 1999; 47% for April 1, to June 30, 1999; 49.1% for July 1, 1999 to September 30, 1999.

21. With regard to peace, order, and quiet, on April 24, 1999 at 11 p.m. Investigator Poindexter conducted a covert investigation at the establishment and observed patrons entering and leaving the establishment in a quiet manner. (Tr. 6/23/99 at 32.) She also did not hear any loud music emanating from the establishment. On May 1, 1999 at approximately 12:40 a.m. until a little past 2 a.m. Investigator Poindexter conducted an announced on-site inspection of the premises. (Tr. 6/23/99 at 32-33, 79.) She testified that it was Salsa night, the crowd was latino, and that you could hear calypso music provided by a disc jockey emanating from the establishment. Investigator Poindexter did not hear any music on her May 29, 1999 visit, did not observe any trash in the front or the rear of the establishment, and observed security in the back of the establishment in their cars making sure nothing happened. (Tr. 6/23/99 at 34.) On Saturday, June 5, 1999 Investigator Poindexter entered the establishment around 11 p.m. and stayed about an hour. (Tr. 6/23/99 at 83.) She did not hear any noise or music, and observed no trash. (Tr. 6/23/99 at 35.) Investigator Poindexter testified that she did not observe patrons exiting the establishment drunk, or in a loud or disorderly manner. (Tr. 6/23/99 at 38-39.)

22. Officer Jenell Robinson, MPD, testified that the establishment was the first to come to the area and others followed. She testified that the establishment has had a positive effect on the peace, order, and quiet of the neighborhood and stated that "a nice crowd of people come through there." (Tr. 8/4/99 at 27-28, 49.) Officer Robinson testified that there is no loud music from the establishment that can be heard when the establishment's doors are closed. (Tr. 8/4/99 at 28, 49.)

23. With regard to peace, order and quiet, Officer Terence Shirk testified that the Applicant has a pretty good establishment in the neighborhood. (Tr. 8/4/99 at 55, 64.) Officer Shirk stated that he did not have anything negative to say about the establishment because he had not experienced any negative things at the establishment except for one incident at the rear of the establishment. (Tr. 8/4/99 at 55, 64.) Officer Shirk stated he had never been called to the establishment for any rowdiness. (Tr. 8/4/99 at 67.) Officer Shirk and Officer Michael A. Wright stated the establishment has all types of events for different cultures. (Tr. 8/4/99 at 64, 67, 74.)

24. With regard to peace, order, and quiet, Mr. Williams testified the establishment has a positive impact. (Tr. 8/11/99 at 25-27, 47, 58.) He noted that the Applicant had turned an abandoned facility into a state-of-the-art restaurant. (Tr. 8/11/99 at 26.) With respect to the acoustics of the establishment, Mr. Toure and Mr. Williams stated the establishment has installed reinforced glass that keeps the sound in so as not to disturb the neighborhood when music is played at the establishment later in the evening. (Tr. 8/11/99 at 27, 58, 63.) Mr. Williams testified he has been in the establishment over 100 times and is there approximately three times a week. (Tr. 8/11/99 at 11, 22.) He testified he runs a Sunday evening group at the establishment called MOCA Sundays, where poetry readings also take place. (Tr. 8/11/99 at 12.) Mr. Williams stated he also runs fundraising benefits on Sundays where he invites different groups in and provides the establishment's space to produce different events. (Tr. 8/11/99 at 13-14.) Mr. Williams testified he has a mailing list of approximately 7,000 and that individuals who have attended events at the establishment have been impressed with the facility. (Tr. 8/11/99 at 14.) Specifically, the bathrooms and the whole facility are clean and the food and service at the establishment is good. (Tr. 8/11/99.) Mr. Williams stated that he encourages patrons not to litter when leaving the establishment. (Tr. 8/11/99 at 18-20.) He testified that it has been difficult for a gay or lesbian to find an establishment that welcomes them in and ensures their safety and that this establishment has been very open to working with the gay and lesbian community. (Tr. 8/11/99 at 43.)

25. With regard to peace, order, and quiet, Officer Wright stated that the establishment's evening club-type activities are not as noisy, not as congested, and do not result in as much loitering as other clubs in the Third District. (Tr. 8/4/99 at 77.) He testified that the establishment has had a positive impact on the revitalization of the 14th Street area. (Tr. 8/4/99 at 77.) Officer Wright stated he has been inside the establishment, and has never observed any rowdy behavior inside the establishment. (Tr. 8/4/99 at 76.)

26. Lieutenant Bridget Sickon, MPD, testified that the peace, order, and quiet of the neighborhood is adversely affected by the establishment. (Tr. 8/4/99 at 125.) Specifically, she stated that she has 14 establishments in her PSA that sell alcohol and this is the only establishment that causes her any problems. (Tr. 8/4/99 at 126.) Lieutenant Sickon's recommendation to the ABC Board was that it close the establishment. (Tr. 8/4/99 at 138.) She testified that she has been inside the establishment approximately eight or nine times. (Tr. 8/4/99 at 142.) She testified that the behavior inside the establishment was unruly to her, specifically intoxicated unruly, but not way out of hand or she would have done something. (Tr. 8/4/99 at 142.)

27. With regard to peace, order, and quiet, Mr. Eugene Winbush who grew up in the 14th Street corridor testified that before the establishment opened up the area was full of prostitutes and drug dealers. (Tr. 8/4/99 at 152-153.) He stated that since the establishment opened in May 1994, it has had a positive effect on the peace, order, and quiet of the neighborhood, especially in assisting the police, stopping crime, keeping homeless people out of the area, stopping the sale of drugs, and making it safe for people to walk their dogs and for kids to walk in the streets. (Tr. 8/4/99 at 154, 189-190.) Additionally, Mr. Winbush testified that the presence of the establishment's security patrolling the area has made it easier for other restaurants to open up in the area, and that his security helps monitor the surrounding area that includes Eleventh Hour and Metro Café. (Tr. 8/4/99 at 154-155.) He testified that he and his security staff often provide help to Eleventh Hour in breaking up fights at that establishment. (Tr. 8/4/99 at 157-158.) With regard to noise, Mr. Winbush stated that noise at the establishment is not as loud as the traffic that goes up and down the street. (Tr. 8/4/99 at 155.)

28. With regard to the peace, order, and quiet of the neighborhood, Ms. Neff testified that there are a number of violent events that she believes have been caused by patrons of the establishment. (Tr. 8/4/99 at 302.) She testified that she protested the license due to her concern about violent activity, violations of the voluntary agreement, and the way the establishment is operated. (Tr. 8/4/99 at 284-303.) Ms. Neff's main issue is that the establishment has created a violent climate in the neighborhood and she is concerned for her safety. (Tr. 8/4/99 at 303.)

29. Moussa Toure testified his establishment has made a big impact on 14th Street since its opening in May 1994. (Tr. 8/11/99 at 62-63.) He stated the building he occupies had been vacant for two years and was previously used as a warehouse. (Tr. 8/11/99 at 64.) Mr. Toure stated he and his co-owner took over 6 months and spent over \$600,000 to fix-up the establishment. (Tr. 8/11/99 at 64, 101.)

30. Investigator Poindexter testified that the establishment currently possesses a certificate of occupancy for a seating capacity of 350. (Tr. 6/23/99 at 30, 34, 78.) She also identified paragraph seven of the establishment's voluntary agreement with the Logan Circle Community Association, which states that the establishment shall at no time have a certificate of occupancy greater than 180 patrons. (Tr. 6/23/99 at 71-72; Protestant's Exhibit No 5.) The voluntary agreement also requires that the restaurant license, occupancy permit license, and capacity placards state the occupancy limit as 180 patrons or less. (Tr. 6/23/99 at 72; Protestant's Exhibit No. 5.) She testified that of the four occasions in her report, she covertly entered the establishment on two occasions. (Tr. 6/23/99 at 48, 54.) First, Investigator Poindexter testified that on her May 1, 1999 visit at approximately 12:40 a.m. -- during a salsa night -- there were approximately 150 patrons inside the establishment, some of whom were dancing, and that the room was not overcrowded. (Tr. 6/23/99 at 32-35, 49.) Second, on her April 24, 1999 visit, around 11 a.m., Investigator Poindexter observed approximately 50 to 75 patrons inside the establishment. (Tr. 6/23/99 at 50.) She testified that on all her visits to the establishment she did not observe more than 180 patrons inside the establishment. (Tr. 6/23/99 at 72-73.)

31. Officer Shirk testified that the establishment had a nice orderly crowd, but that it

was not overflowing or too crowded. (Tr. 8/4/99 at 60, 66.) Ms. Watson testified that approximately 100 patrons were in the establishment on her first visit to the establishment. (Tr. 8/4/99 at 266.) On Ms. Watson's second visit she stated that there were "probably about 300 patrons" in the establishment that night. (Tr. 8/4/99 at 268.) It was unclear from Ms. Watson's testimony whether the "probably about 300 patrons" in the establishment referred to the number of patrons in the establishment at one time or over the course of the entire night.

32. On May 29, 1999, about 11:55 p.m. until approximately 2 a.m., Investigator Poindexter conducted a covert on-site investigation outside the establishment and noticed 10 patrons outside waiting to gain entrance to the establishment. (Tr. 6/23/99 at 34, 74-75, 81.) Investigator Poindexter stated that the voluntary agreement does not permit people standing outside the premises waiting to get in. (Tr. 6/23/99 at 83.) Officer Wright testified that he has seen people standing in line waiting with their ID's in hand to be checked at the door. (Tr. 8/4/99 at 92.) Ms. Watson stated on her first visit to the establishment there was a line of approximately four or five people on the street waiting to get in. (Tr. 8/4/99 at 265.) Mr. Winbush acknowledged that sometimes people do wait in line to try and get in. (Tr. 8/4/99 at 244-245.) However, Mr. Winbush stated that when people are standing outside the door waiting to get in he makes them leave. (Tr. 8/4/99 at 244-245.)

33. Mr. Toure testified that he possesses a certificate of occupancy for 350. (Tr. 8/11/99 at 66.) However, Mr. Toure stated that he does not have more than 180 people -- as set forth in the voluntary agreement -- in his establishment at one time. (Tr. 8/11/99 at 79.) He testified that he is aware of the 180 limitation in paragraph seven of his voluntary agreement. Mr. Toure stated he has tried to work with the neighborhood and ANC 2F to resolve this issue but they refuse to meet with him. (Tr. 8/11/99 at 66-69, 81-83, 91-93, 96-98.) As a result, when he changed his certificate of occupancy to 350 people he did not notify the ANC of the change because he thought they did not want to talk to him. (Tr. 8/11/99 at 84.) ANC Commissioner David Stephens stated that ANC 2F was not looking for a new voluntary agreement but enforcement of the existing voluntary agreement and its provisions that are not being followed. (Tr. 8/11/99 at 142, 147, 149.)

34. Shirley Neff resides in the 1400 block of Q Street, at 1445 Q Street, where she has lived with her husband since the Spring of 1996. (Tr. 8/4/99 at 277, 282, 313.) She is a part of the Q Street Association which consists of residents of the 1400 block of Q Street. (Tr. 8/4/99 at 281, 316.) The Q Street Association is not a formal organization. (Tr. 8/4/99 at 319.) Ms. Neff testified that she was concerned with the size of events held at the establishment. (Tr. 8/4/99 at 287-288.) Ms. Neff expressed her concern that the establishment was exceeding the maximum capacity of 180 patrons under the February 16, 1994 voluntary agreement. (Tr. 8/4/99 at 288; Protestants' Exhibits Nos. 5-7.) Ms. Neff testified that in 1994, the certificate of occupancy for the establishment was 150. (Tr. 8/4/99 at 288, 290-291.) Without ANC approval in 1995, the establishment changed the Certificate of Occupancy to 250 and later in 1998 raised it to 350. (Tr. 8/4/99 at 288-289, 292.) Ms. Neff identified the provision of the voluntary agreement which requires that the establishment's restaurant license and occupancy permit for capacity to be for 180 patrons or less. (Tr. 8/4/99 at 290.) She identified a provision in the establishment's application dated November 10, 1993 that indicates that the capacity of the establishment is 180

people. (Tr. 8/4/99 at 295-296.) Ms. Neff testified that when the establishment opened up it was a restaurant. Ms. Neff testified that she has never been given notice of any substantial change that the establishment is going to be a club. (Tr. 8/24/99 at 294-298, 340.) She testified that the original voluntary agreement was amended in September 26, 1994 to allow dancing at the establishment. (Tr. 8/4/99 at 292-293, 338; Protestants' Exhibit No. 6.) The establishment is not permitted to have live music. (See Board's application file.)

35. Seville Williams testified that his production company has produced over 60 different events of various types at the establishment over the past two years. (Tr. 8/11/99 at 10-13, 47.) These events range in size from 2 to 300 patrons over the course of a night. (Tr. 8/11/99 at 11, 28, 29.) He stated that there have been times when there have been more than 300 people in the establishment over the course of a night. (Tr. 8/11/99 at 28-29.) Mr. Williams testified that he talked to Mr. Toure when negotiating his events about the average number of patrons he could bring and as a result had read the voluntary agreement and knew it provided for an occupancy of somewhere between 160-180 patrons. (Tr. 8/11/99 at 28-31.)

36. Mr. Williams testified he usually has two sets of events on Sunday Nights with a group from 7 p.m. to 10 p.m. and another group from 10 p.m. until closing. (Tr. 8/11/99 at 45.) He stated that for the first group he normally sets up a theater style setting with 40 to 50 seats with additional room in an upstairs balcony. (Tr. 8/11/99 at 45-46, 54.) Mr. Williams stated this setting will normally attract about 100 patrons. (Tr. 8/11/99 at 54.) Mr. Williams closes his Sunday events at around 2 a.m. and testified that patrons leave in an orderly manner with most patrons having left by 1:00 a.m. or 1:30 a.m. (Tr. 8/11/99 at 17, 36.) The second setting will attract between 200 to 300 patrons over the course of the night. (Tr. 8/11/99 at 54-55.) Mr. Williams testified that on a recent Sunday he only got 58 patrons because of the negative publicity about the establishment. (Tr. 8/11/99 at 55.)

37. With regard to criminal activity, which is a factor to be considered under peace, order, and quiet, the Protestants submitted a letter dated August 2, 1999 from Chief of Police Charles H. Ramsey. (Tr. 8/4/99 at 36-45; Protestants' Exhibit No. 13.) In his letter, Chief Ramsey requested the Board to revoke the establishment's license pursuant to his authority under D.C. Code § 25-118 (f)(2) (1999 Supp.), based on seven incidents, which he believed to have occurred within 1000 feet of the establishment and to be associated with the operation of the establishment. (Tr. 8/4/99 at 40; Protestants' Exhibit No. 13) The dates of these seven incidents are April 27, 1997, February 26, 1998, March 15, 1998, August 30, 1998, March 13, 1999, April 24, 1999, and June 12, 1999. (Protestants' Exhibit No. 13.) As a result of Chief Ramsey's request, the Board instituted a summary suspension proceeding and has convened subsequent show cause hearings pursuant to D.C. Code § 25-118 (g)(2) and 23 DCMR § 1502 respectively, which have allowed the Board to place some restrictions on the licensee's activities and to examine in-depth these seven incidents -- as discussed above -- alleged by Chief Ramsey to have occurred within 1,000 feet of the establishment and to be associated with the operation of the establishment. The Board has retained jurisdiction over the establishment due to Chief Ramsey's revocation request -- with another show cause hearing scheduled for June 7, 2000 -- to allow the Board to monitor the establishment for any new incidents that may warrant additional restrictions or revocation of the establishment's liquor license. However, testimony on criminal activity --

(all of which was the subject of Chief Ramsey's letter) -- was permitted in this protest hearing for the sole purpose of determining whether the establishment has an adverse effect on peace, order, and quiet.

38. Captain Malkin, MPD, the overall Commander of Sector Two for the Third District for approximately two years, testified that he has responsibility for PSA's 308 through 314. (Tr. 6/23/99 at 121-122.) His area includes the establishment, which is located in PSA 309. (Tr. 6/23/99 at 121.) Captain Malkin testified that he has been to the establishment approximately four or five times. (Tr. 6/23/99 at 122.) He testified that police officers in his patrol sector do not patrol the establishment any more often than any other establishment in the area. (Tr. 6/23/99 at 152.)

39. Testimony from the police and other witnesses revealed that there have been two homicides that have occurred and been committed by patrons who were inside the establishment previous to both homicides. (Tr. 6/23/99 at 123; Tr. 8/4/99 at 57; Tr. 8/11/99 at 145, 147.) The first homicide occurred on March 15, 1998, the victim and complainant being Warren Helm. (Tr. 6/23/99 at 124-125; Tr. 8/4/99 at 118; Protestants' Exhibit No. 11.) Specifically, a homeless person approached a group of 7 to 8 Hispanic males across the street from the establishment on the 1500 block of 14th Street asking for money, a verbal altercation ensued, followed by the Hispanic males beating up the homeless person. (Tr. 8/4/99 at 183-185.) Mr. Winbush went over and stopped the beating of the homeless individual. (Tr. 8/4/99 at 184-185.) At the same time, the complainant, who had been driving down Q Street, stopped to assist the homeless person being assaulted by the group of Hispanic males. The group of Hispanic males turned on the complainant, chased him north on 14th Street and stabbed him to death approximately four blocks away on the 1800 block of 14th Street. (Tr. 6/23/99 at 118, 126, 129-131; Tr. 8/4/99 at 118-143, 183-188.) The assailants who committed the murder had been at the establishment. (Tr. 6/23/99 at 128-129, 155; Tr. 8/4/99 at 119, 131.) Mr. Helm had not been at the establishment. (Tr. 6/23/99 at 90; Tr. 8/4/99 at 137.) With regard to the March 15, 1998 murder, Mr. Toure had no knowledge of it when he closed his establishment at 3 a.m. as nothing occurred in the establishment prior to the closing of the establishment. (Tr. 8/11/99 at 73.) Mr. Winbush did not learn of the homicide until Monday morning. (Tr. 8/4/99 at 186-188.)

40. The second homicide occurred on August 30, 1998 in the 1400 block of Church Street in the back parking lot of the establishment. (Tr. 6/23/99 at 131; Tr. 8/4/99 at 53-56; Protestant's Exhibit No. 12.) There was one assailant who, like the victim, had patronized the establishment that night. (Tr. 6/23/99 at 131; Tr. 8/4/99 at 120.) Mr. Matthew Muir, the victim and complainant, was shot in the head by the assailant as the result of a domestic altercation over a female. (Tr. 6/23/99 at 132; 8/4/99 at 130.) Specifically, the female was inside the establishment with the complainant. The female had earlier had a domestic dispute with the assailant who then saw her in the establishment with the complainant. (Tr. 8/4/99 at 179.) One of the security staff told the assailant to leave and Mr. Winbush watched him leave the establishment around midnight, get in his car, and drive off. (Tr. 8/4/99 at 180.) Mr. Winbush stated that one hour later the assailant came back and hid; the complainant and the female went to the complainant's car and talked; the assailant then shot the complainant and drove away. (Tr. 8/4/99 at 120, 182.) Lieutenant Sickon testified that there have been no homicides in PSA 309

since the August 30, 1998 homicide. (Tr. 8/4/99 at 132.)

41. Captain Malkin and Lieutenant Sickon testified to an April 27, 1997 report where two persons were beaten outside of the establishment by patrons. (Tr. 6/23/99 at 133; Tr. 8/4/99 at 117.) They both also testified to a March 13, 1999 incident where the complainant was assaulted by a patron outside the establishment after a verbal altercation that started inside the establishment, and an arrest was made outside in reference to the assault. (Tr. 6/23/99 at 150; Tr. 8/4/99 at 120-121, 203-208; Protestants' Exhibit No. 22.) While the assailant was being held by the police in front of the establishment, Mr. Winbush asked Officer Washington -- an officer on the scene -- if everything was all right and was told everything was "cool." The assailant later became angry and struck two windows of the establishment causing breakage. (Tr. 8/4/99 at 208-209, 228, 300-301; Protestants' Exhibit No. 14.) Mr. Winbush stated that the windows were fixed shortly thereafter. (Tr. 8/4/99 at 229.)

42. Captain Malkin and Lieutenant Sickon testified about an April 24, 1999 incident where the complainant reported that a patron of the establishment assaulted him outside the establishment. (Tr. 6/23/99 at 150-151; Tr. 8/4/99 at 121.) An arrest was made under the charge of simple assault. (Tr. 8/4/99 at 121.) Mr. Winbush testified that he was not aware of this incident. (Tr. 8/4/99 at 172-173.)

43. Captain Malkin and Lieutenant Sickon testified to a June 12, 1999 incident report where the complainant reported that a patron of the establishment smashed a car window. (Tr. 6/23/99 at 151; Tr. 8/4/99 at 121.) Lieutenant Sickon stated it was alleged that shots were fired at a now vacant former school building in that location but she was unable to confirm whether or not gunshots were fired during the incident. (Tr. 8/4/99 at 121, 168.) The testimony revealed that Ms. Watson reported what she thought were gunshots to 911. (Tr. 8/4/99 at 271-273.) However, the testimony of Officer Wright and Mr. Winbush revealed that someone was in the alleyway throwing firecrackers during this incident, which a dispatcher called over the radio as sounds of gunshots. (Tr. 8/4/99 at 93, 164-173, 210-215.) The testimony of Ms. Watson established that a patron of the establishment did smash a car window. (Tr. 8/4/99 at 270-273.) On another occasion, Ms. Watson observed one altercation between two gentlemen pushing and shoving each other but the establishment's security staff escorted the gentlemen outside. (Tr. 8/4/99 at 269-270.)

44. Officer Jenell T. Robinson, MPD, Third District, for over eight years, testified that she patrols the streets of the Third District on the midnight tour of duty. (Tr. at 8/4/99 at 22-24, 50.) She is with PSA 310, which borders PSA 309 and sometimes has to respond to calls for PSA 309. (Tr. 8/4/99 at 30.) She stated that when she toured the area before the establishment opened there were no clubs in the area and foot traffic consisted of mainly homeless people. (Tr. At 8/4/99 at 24.) Officer Robinson testified that she had only been called to the establishment for a bogus bomb threat and has never been called upon to investigate any incidents that occurred outside of the establishment. (Tr. 8/4/99 at 25-26, 30.) Officer Robinson testified that during her daily tour of duty she will stop by the establishment one or two times to see how the establishment is doing. (Tr. 8/4/99 at 26.) She testified that she has been observing the establishment on almost a daily basis for the five years that it has been in existence as a

restaurant. (Tr. 8/4/99 at 48.) Ms. Robinson testified that she has a good relationship with the security staff at the establishment and has confidence in their ability to do their job. (Tr. 8/4/99 at 26-29.)

45. Officer Terence L. Shirk, MPD, testified that he is a patrol officer with PSA 309 and has been patrolling the area for about three years. (Tr. at 8/4/99 at 51, 57, 64-65.) He stated that during his tour of duty he passes by the establishment about three or four times a day. (Tr. 8/4/99 at 52.) Officer Shirk testified that in the PSA there are a lot of drunks but not too many violent crimes. He was not aware of any gang violence in the neighborhood and stated that overall it is a nice neighborhood. (Tr. 8/4/99 at 70.) He testified that he had been inside the establishment -- though not as a customer -- for business checks including in the evening during the midnight tours he has worked but had never been called to the establishment for any incident that occurred inside the club. (Tr. 8/4/99 at 52, 59-60, 71-72.) He stated he had been called to the establishment for an incident that occurred outside the establishment. (Tr. 8/4/99 at 52-53.) Specifically, Officer Shirk was called to the establishment for the August 30, 1998 homicide. Officer Shirk testified that because of his job he has frequent contacts with Mr. Eugene Winbush and his staff. (Tr. 8/4/99 at 53-54.) He testified that he believes the establishment's security does a good job inside of the establishment and at the front door. (Tr. 8/4/99 at 54.)

46. Officer Michael A. Wright, MPD, testified he has been with MPD for nine and one-half years and is currently assigned to PSA 309 to do routine patrol in a marked scout car. (Tr. 8/4/99 at 72-73.) He occasionally patrols with Officer Shirk and has been in the Third District for approximately two years. (Tr. 8/4/99 at 73-74.) Officer Wright testified he patrols by the establishment at least five times a week when he is working. (Tr. 8/4/99 at 75, 96.) He stated that in the two years he has been working in the area he has only been called to the establishment for minor disorderly calls. (Tr. 8/4/99 at 75.) Specifically, calls for loud music and people drinking outside. (Tr. 8/4/99 at 75.) He stated that he had seen drunk people in the area but could not tell if they were from the establishment or from the Eleventh Hour or Metro Cafe. (Tr. 8/4/99 at 75-76.) He did not recall ever being called to investigate incidents occurring inside the establishment. (Tr. 8/4/99 at 76.) Officer Wright testified that Mr. Winbush does an effective job in providing security for the establishment. (Tr. 8/4/99 at 77, 96-97.) He testified that now he works the day shift but for the first year he worked the midnight shift, which starts at midnight. (Tr. 8/4/99 at 78-80.) He was aware of the March 13, 1999 incident where the front windows of the establishment were smashed. (Tr. 8/4/99 at 82-83.)

47. Lieutenant Bridget Sickon, MPD, 3rd District, assigned to PSA 309 where she has been the Lieutenant for 6 months, testified she has 17 officers and 2 sergeants under her command. (Tr. 8/4/99 at 99, 126.) She testified that there had been violent assaults and incidents associated with the establishment and that MPD had concerns that Latin music being played at the establishment drew some gang members. (Tr. 8/4/99 at 103-104.) She stated the most recent assault which occurred on July 10, 1999, is listed as an injured person to the hospital because the person did not want to go forward with any complaint. (Tr. 8/4/99 at 105, 108, 117; Protestants' Exhibit No. 15.) Lieutenant Sickon stated that this was an altercation that occurred on the corner of 14th Street and U Street and not in front of the establishment, where the complainant was hurt enough -- suffering a laceration to the head -- to need medical attention.

(Tr. 8/4/99 at 112, 144.) Mr. Winbush testified that he came outside on the tail end of the incident. He testified that he personally witnessed an intoxicated individual being carried down the street by five or six of his friends. Mr. Winbush stated the intoxicated individual tried to get away from his friends carrying him, they let him go, and he fell and hit his head. (Tr. 8/4/99 at 162-164.) Mr. Winbush and Lieutenant Sickon stated they did not know whether any of these individuals had come from the establishment. (Tr. 8/4/99 at 107, 163.)

48. Lieutenant Sickon testified to a February 26, 1998 incident, where the complainant reports that a patron impersonated a police officer to gain entry into the establishment free of charge. Mr. Winbush testified that an individual flashed a badge to gain access where the singer was located; Mr. Winbush didn't see the proper credentials, went to a police officer that was present in the establishment, and the police arrested the individual and escorted him out of the establishment for impersonating a police officer. (Tr. 8/4/99 at 118, 178.)

49. The testimony revealed that even though the establishment has an enforced dress code some gang members do patronize the establishment. (Tr. 6/23/99 at 130-131; Tr. 8/4/99 at 122-124, 129-135; Tr. 8/11/99 at 132.) Lieutenant Sickon stated that gang members come in all shapes, sizes, and colors and acknowledged that gang members dress nicely sometimes. (Tr. 8/4/99 at 122-123.) She testified that it takes a certain level of expertise to identify a gang member who is dressed properly. (Tr. 8/4/99 at 123-124.) Lieutenant Sickon testified that the gang members that patronize the establishment are mainly Latinos who tend to enjoy the Latin-type rhythms. (Tr. 8/4/99 at 124, 128-129.) She testified that she did not believe that the establishment's management encourages or tries to recruit gangs to the establishment. (Tr. 8/4/99 at 122, 129-135.) She said Latino gang members just enjoy coming socially to the establishment for Latino nights and to drink alcohol at the establishment. (Tr. 8/4/99 at 129, 135.) Captain Malkin testified that he was not aware of any gang activity inside the establishment. (Tr. 6/23/99 at 130-131.) Mr. Winbush testified that he has attempted to identify individuals who were patrons of the establishment and might be gang members by talking to police officers and people in the area, but identifying gang members is difficult, especially if they are nicely dressed. (Tr. 8/24/99 at 252-254.) Mr. Williams and Mr. Toure testified that they were not aware of any gang members being patrons of the establishment. (Tr. 8/11/99 at 56, 108.)

50. Mr. Winbush testified that he is responsible for keeping the operation of the establishment secure, patrolling the neighborhood for problems, and keeping underage and problem people out of the establishment. (Tr. 8/4/99 at 146, 151, 188.) He testified that he has "a well-trained security team that consists of mostly military trained guys". (Tr. 8/4/99 at 146, 215.) Mr. Winbush testified his security team consists of approximately 12-15 members with not more than 13 members being present at one time. (Tr. 8/4/99 at 158, 215, 241.) Mr. Winbush stated that outside the security team attempts to keep homeless people away from the area and tries to make sure that cars in the neighborhood are not broken into. (Tr. 8/4/99 at 147.) He stated that even before the establishment opened the neighborhood has had a problem of cars being broken into. (Tr. 8/4/99 at 147.) He testified that to his personal knowledge there have been no incidents of breaking into a car related to the establishment. (Tr. 8/4/99 at 148.) Mr. Winbush stated that on numerous occasions he and other security staff have chased away

individuals attempting to break into cars. (Tr. 8/4/99 at 148-149.) Mr. Winbush stated that he has four staff members patrolling outside the establishment. (Tr. 8/4/99 at 149-150.) He testified that he has two members of the security staff ride in a car around the block. Specifically, they go down Church Street; they come up the alley; and they go down to P Street (Tr. 8/4/99 at 148.) Additionally, he stated that he has two members of his security staff walk the block on foot and all members of his security wear blinking lights. (Tr. 8/4/99 at 148, 217.) He has five security staff on duty inside the establishment. (Tr. 8/4/99 at 216.)

51. Mr. Winbush stated that he works both inside and outside the establishment, spending approximately 60 percent of his time outside monitoring who is entering the establishment. (Tr. 8/4/99 at 149, 160, 215.) With regard to entry procedures, Mr. Winbush stated that he has two staff members -- in addition to the four staff members patrolling outside -- up front that require patrons to show identification. (Tr. 8/4/99 at 149-150, 217.)

52. Mr. Winbush testified the establishment has a wristband policy where anyone over 21 gets a wristband allowing them to drink. Anyone under 21 gets a mark on their hands with a magic marker either a happy or sad face. (Tr. 8/4/99 at 150, 159.) He stated that bartenders are good at not serving alcohol to patrons without wristbands. (Tr. 8/4/99 at 159.) Additionally, Mr. Winbush normally has two members of the security staff monitor for intoxicated patrons who the establishment then stops serving or removes from the establishment. (Tr. 8/4/99 at 254-256.) He testified that once you pass the security at the front door, they have female and male security that search their respective genders. (Tr. 8/4/99 at 150.) Mr. Winbush stated the search is done to prevent patrons from bringing in weapons, drugs and alcohol. (Tr. 8/4/99 at 151.) Mr. Winbush testified that when the establishment closes he is outside. Additionally, he brings half his staff outside around closing and they do a whole sweep of the area. (Tr. 8/4/99 at 160.)

53. Mr. Winbush testified that inside the establishment, he has his security enforce the dress code of no baggy jeans, tennis shoes, untucked shirts, or athletic wear. (Tr. 8/4/99 at 159.) Mr. Winbush discussed calls for service alleging incidents at the establishment that were false. (Tr. 8/4/99 at 173-175.) He stated that Lieutenant Sickon has talked to him and his staff at the establishment and told him that everything looks great and telling him "No Problems. This is good." (Tr. 8/4/99 at 176.) He testified that recently she stopped by for three or four hours and told him "Good job. I like these blinking lights." (Tr. 8/4/99 at 176.) He testified that there have been approximately six or seven incidents in the four years that he has been working at the establishment. (Tr. 8/4/99 at 188-189.) He testified that about nine police officers and detectives are patrons of the establishment. (Tr. 8/4/99 at 247-248.)

54. With regard to peace, order, and quiet, Investigator Poindexter was aware, based upon her discussions with the MPD in the Third District, of the March 15, 1998 and August 30, 1998 homicides MPD linked to patrons of the establishment as described above. (Tr. 6/23/99 at 90-91.) Investigator Poindexter identified a sale to minor violation that occurred at the establishment on July 27, 1998, for which the establishment paid a fine. (Tr. 6/23/99 at 101-102.) She testified that she was not aware of any other incidents of crime in or around the establishment. (Tr. 6/23/99 at 91.)

55. Shirley Neff testified that she was concerned with security at the establishment as the result of the two murders. (Tr. 8/4/99 at 283-285.) Ms. Neff and Mr. Toure both stated that a July 31, 1997 amendment to the voluntary agreement between the residents of the 1400 block of Q Street and the establishment requires the establishment to provide a minimum of six patrollers: two each for the 1400 blocks of Q Street and Church Street and the alley, with continuous patrolling to last a minimum of one-hour before and one-hour after closing time. (Tr. 8/4/99 at 294, 338; Tr. 8/11/99 at 72, 92; Protestants' Exhibit No. 7.)

56. Mr. Williams spoke positively about the job the establishment's security staff was doing in ensuring the safety of individuals both inside and outside the establishment. He testified that the establishment's security staff has intervened in incidents that have occurred at both Eleventh Hour and Metro Cafe. (Tr. 8/11/99 at 16, 23, 26, 47.) Mr. Williams testified that in the over 100 times he has been to the establishment, he has only witnessed one episode of misbehavior inside the establishment caused by a patron who had had too much to drink, and who was then escorted out of the establishment and placed into a taxi called by the establishment. (Tr. 8/11/99 at 16, 33.) This incident did not occur on a Sunday night. (Tr. 8/11/99 at 16.) He testified that he tries to make sure that patrons he brings to the establishment conduct themselves in a mature manner. (Tr. 8/11/99 at 17.)

57. Mr. Toure testified that Mr. Winbush has been doing a good job with security and has an excellent relationship with the police. (Tr. 8/11/99 at 72-73.) Mr. Toure testified that since the August 30, 1998 homicide, he has stepped up security, and now also has volunteer people who pretend to be security to keep a check on what is happening and to give security a heads-up of a possible problem individual. (Tr. 8/11/99 at 75-76.) He testified that his policy with regard to alcohol is that if you have too much to drink you should not be in the establishment. (Tr. 8/11/99 at 76.)

58. Mr. Toure testified that the crowd on Sundays brought by Mr. Williams is one type of crowd frequenting the establishment. (Tr. 8/11/99 at 115.) Mr. Toure testified that the incidents of violence did not occur on Sundays. (Tr. 8/11/99 at 115-116.) He testified that both homicides occurred on weekends. (Tr., 8/11/99 at 116.) Mr. Toure testified that on Friday and Saturday he has a young college crowd between 19 to 21 years of age that cannot drink. He uses wristbands to distinguish between patrons who can and cannot legally drink alcohol. (Tr. 8/11/99 at 116-119.)

59. David H. Stephens, who resides in the 1400 block of R Street, N.W., testified that he is the Advisory Neighborhood Commissioner for 2F-01, which contains the geographic area in which the establishment is located. (Tr. 8/11/99 at 125-126.) He stated he also leads a police/citizens group in PSA 309 that meets with officers in PSA 309. (Tr. 8/11/99 at 126.) Mr. Stephens stated that after the second homicide was reported in the newspaper as associated with the establishment it caused neighbors to attend a September 1998 ANC meeting to express concern with what they believed to be a pattern of violence associated with the establishment. (Tr. 8/11/99 at 127.) Mr. Stephens stated Mr. Winbush is a fixture at PSA meetings and well known in the community. (Tr. 8/11/99 at 133.)

60. Mr. Williams testified that when Sunday events at the establishment begin at 7 p.m. street parking is already taken up. (Tr. 8/11/99 at 14.) He testified that in addition to the parking lot in the rear of the establishment there is a church parking lot at 14th Street and Q Street that is used by patrons. (Tr. 8/11/99 at 15, 32.) Mr. Williams noted that a lot of the patrons on his mailing list live in the surrounding area. (Tr. 8/11/99 at 15, 32.) He stated that he has not witnessed any parking problems at the establishment for his events and that most of the time his patrons do not complain about an inability to find a place to park, stating that all on-street parking may be taken but they always manage to find a parking space. (Tr. 8/11/99 at 46-47.) On her first visit to the establishment Ms. Pamela Watson found parking on 14th Street. (Tr. 8/4/99 at 264.)

61. With regard to parking and vehicular and pedestrian safety, Investigator Poindexter testified that paragraph one of the establishment's voluntary agreement dated February 16, 1994, with the Logan Circle Neighborhood Association requires parking to be made available for the establishment's patrons whenever it is open for business after 6 p.m. Specifically, the voluntary agreement requires the establishment to provide 60 parking spaces. (Tr. 6/23/99 at 65, 68-69; Protestant's Exhibit No. 5.) Paragraph one of the agreement also allows the parking provided by the establishment to be in the form of valet parking. (Protestant's Exhibit No. 5.) Mr. Toure testified he has enough parking in a parking lot in the back of the establishment, and that when he has a party or wedding he has a contract for valet parking. (Tr. 8/11/99 at 90-91.) Investigator Poindexter identified a parking contract with the Danas Parking Company that allows the establishment to use the parking lot located at 1430 P Street. (Tr. 6/23/99 at 71; Board's Exhibit No. 1 at 7.)

62. With regard to pedestrian and vehicular safety, Mr. Williams testified that he has never encountered any problems at the establishment and noted that the police patrol 14th Street very regularly. (Tr. 8/11/99 at 15.) He testified that the police ask anyone who double-parks their car to move on and that the establishment's security also takes care of pedestrian traffic along 14th Street. (Tr. 8/11/99 at 16.) Investigator Poindexter did not observe any double-parked vehicles on her May 29, 1999 and June 5, 1999 visits. (Tr. 6/23/99 at 34.) The issue of parking and vehicular and pedestrian safety was not raised by the Protestants as a protest issue. (See Board's protest file.)

63. Ms. Neff testified that the Protestants were not raising the establishment's impact on real property values as an issue. (Tr. 8/4/99 at 324.) Specifically, Ms. Neff testified that the value of her home on Q Street had increased over the past year. (Tr. 8/4/99 at 326-327, 329-330.)

CONCLUSIONS OF LAW

64. Pursuant to subsections 14(b) (1) and (2) of the Act, D.C. Code § 25-115(b)(1) and (2) (1991), an Applicant must demonstrate to the satisfaction of the Board that the establishment for which a liquor license is sought is appropriate for the neighborhood in which it is located. Having considered the evidence upon which this determination must be made and the

findings of fact adduced at the hearings, the Board concludes that the Applicant has demonstrated that the renewal of the establishment's liquor license -- based upon the terms of the Applicant's existing license and the additional conditions imposed by the Board as listed below -- is appropriate for the delineated area in which it is located.

65. The Board recognizes that pursuant to D.C. Code § 1-261(d)(1999), an ANC's properly adopted written recommendations are entitled to great weight from the Alcoholic Beverage Control Board. See Foggy Bottom Ass'n v. District of Columbia ABC Bd., 445 A.2d 643, 646 (D.C. 1982). In this instance, the letter by Helen Kramer on behalf of ANC 2F recommends that the Applicant's renewal application be denied. This recommendation is entitled to great weight. The ANC 2F letter simply mentions that ANC 2F opposes the renewal of the Applicant's liquor license due to its purported adverse impact on the peace, order, and quiet of the neighborhood. However, there was oral testimony provided by ANC 2F that it had concerns about the establishment's impact on criminal activity in the area.

66. With regard to real property values, there was no evidence submitted by ANC 2F or by Ms. Neff, Protestant, that the establishment had an adverse impact on real property values. In fact, Ms. Neff who resides in the surrounding area of the establishment testified that the value of her home on Q Street had increased over the past year.

67. With regard to residential parking, the Board finds the testimony of Investigator Poindexter, Mr. Williams, and Mr. Toure to be credible with regard to the establishment not having an adverse impact on residential parking or vehicular and pedestrian safety in the neighborhood. Additionally, the Board found no evidence of a violation of the voluntary agreement between the establishment and the Logan Circle Citizen Association with regard to parking. Specifically, the Board finds no evidence submitted by ANC 2F or the Protestant to contradict the testimony of Mr. Williams, Mr. Toure, and Investigator Poindexter leading us to conclude that the establishment's use of the parking lot in the back of the establishment and the establishment's contract for valet parking is sufficient to meet the establishment's parking obligations under the voluntary agreement.

68. With regard to peace, order, and quiet, the Board finds that the testimony of Investigator Poindexter, Officer Robinson, Mr. Williams, Mr. Toure, Mr. Winbush, and Officer Wright revealed that noise is not a problem at the establishment. The Board also finds based on the testimony of Investigator Poindexter and Officer Wright that at or around the establishment: 1) trash or littering is not a problem; and 2) loitering is not a problem.

69. With regard to criminal activity, the Protestants submitted a letter dated August 2, 1999 from Chief of Police Charles H. Ramsey requesting the Board to revoke the establishment's license pursuant to his authority under D.C. Code § 25-118 (f), based upon seven incidents, which he believed to have occurred within 1,000 feet of the establishment and to be associated with the operation of the establishment. As a result of Chief Ramsey's request, the Board has held a summary suspension and subsequent show cause hearings pursuant to D.C. Code § 25-118 (g)(2) and 23 DCMR § 1502 respectively, which have allowed the Board to place some restrictions on the licensee's activities and to examine in-depth these seven incidents -- as

discussed above --alleged by Chief Ramsey to have occurred within 1,000 feet of the establishment and to be associated with the operation of the establishment. The Board has retained jurisdiction over the establishment due to Chief Ramsey's revocation request -- with another show cause hearing scheduled for June 7, 2000 -- to allow the Board to monitor the establishment for any new incidents that may warrant additional restrictions or revocation of the establishment's liquor license. However, testimony on criminal activity -- in Chief Ramsey's letter -- was permitted in this protest hearing for the sole purpose of determining whether the establishment has an adverse effect on peace, order, and quiet.

70. With regard to criminal activity, the testimony reveals that while several unfortunate violent incidents can be attributed to patrons of the establishment over the last several years -- none of which actually occurred inside the establishment and some of which occurred outside the two-year license period at issue -- the establishment does possess adequate security operations both inside and outside the establishment that assist the establishment and the surrounding area including other business establishments with efforts to prevent and respond to any criminal activity at the establishment and in the surrounding area.

71. With regard to the March 15, 1998 homicide, testimony revealed that the incident occurred across the street from the establishment with the victim being chased up the street and killed four blocks away from the establishment. Furthermore, testimony revealed that Mr. Winbush, the Chief security officer for the establishment, assisted and rescued the homeless person initially being beaten by the assailants. With regard to the August 30, 1998 homicide, involving an ongoing domestic dispute, testimony revealed that the establishment's security staff: 1) told the assailant to leave the establishment; and 2) watched the assailant leave the establishment, get in his car, and drive off. Captain Malkin and Lieutenant Sickon also testified to several assaults over the past several years that could be linked to patrons of the establishment.

72. However, the Board finds that in balancing the testimony as a whole, the establishment does not have an adverse impact on peace, order, and quiet with regard to criminal activity. Specifically, the Board points to the testimony of Officer Robinson, Mr. Williams, Mr. Winbush, and Mr. Toure, all of whom stated that the establishment has a positive impact on the peace, order, and quiet of the neighborhood and testified to the excellent job done by the establishment's security staff. Additionally, the Board found credible the testimony of Officer Shirk and Officer Wright who patrol this area on a regular basis and who testified that the establishment has a positive impact on the neighborhood. It is important to note that Officer Shirk who testified in praise of the establishment's security and the establishment's positive impact on the neighborhood was called to the establishment for the August 30, 1998 homicide. Additionally, Officer Wright -- who also spoke highly of the establishment's security and its effect on the peace, order, and quiet of the neighborhood -- was aware of the March 13, 1999 and June 12, 1999 incidents.

73. Additionally, it is specifically noted that, with respect to the request contained in the letter of August 2, 1999 from Police Chief Charles H. Ramsey issued pursuant to D.C. Code 25-118(f)(2), the Board instituted and retains jurisdiction over a summary suspension and revocation proceeding to address issues of criminal conduct identified therein.

74. The invocation of this statutory language from the D.C. Code (colloquially known as the "Ibex Provision") was an action of first impression before the Board. Although this request from Chief Ramsey initially came to the Board's attention through its introduction by the Protestants in the instant proceeding, a protest proceeding is not the proper context within which to address the merits of such a request.

75. The Board observes that the Ibex Provision is a specific grant of statutory authority to the Chief of Police to request revocation of an ABC license. These types of requests are based on issues of public safety particularly within the purview of the police department, and receipt of such a request from the Chief of Police is treated by the Board with the utmost seriousness. Since preservation of the public safety is the central mission of the police department, the Board considers issuance of a revocation request by the Chief of Police pursuant to the Ibex Provision to be *prima facie* grounds for summary suspension of any ABC license. As such, the Board has an entire statutory procedure in place to handle such matters; and these procedures are necessary to ensure that the public as well as the license-holder receive due process of law.

76. In the instant proceeding, the Protestants introduced the request from Chief Ramsey under the Ibex Provision as an element of proof to their allegations regarding peace, order and quiet. The Protestant's introduction of this request within the instant protest proceeding created a tangible administrative and procedural quandary for the Board. While the Protestants certainly are entitled to present such a document in their case, its evidentiary value is questionable. By its nature, an Ibex request from the Chief of Police is a request based upon specific allegations of fact within the particular purview of the police department. The Ibex request *itself* does not constitute factual evidence of the assertions it contains. Yet, that is precisely why the Protestants submitted the document to this record – as evidentiary proof that peace order and quiet were being violated by the Applicant *for the reasons contained in the Ibex request*.

77. The allegations contained in an Ibex request require submission of an evidentiary foundation to support Board action. It is for this reason that the Board convenes a hearing after the summary suspension --- to receive such evidence and consider its merits. Not only do the Protestants lack standing to prosecute an Ibex request (the Protestants do not represent the public interest), even if they did have standing, the Protestants are neither privy to the evidence needed for presentation at the Board's hearing on the summary suspension, nor are they in a position to present such evidence directly. Only the Chief of Police can do both; and only the Chief of Police can prosecute an Ibex request.

78. Accordingly, the Board instituted a separate summary suspension and revocation proceeding to address Chief Ramsey's Ibex request. Thus, the instant Protest is neither the proper proceeding nor the proper record upon which the Board must base its ultimate decision on the public safety issues presented by Chief Ramsey.

79. The testimony revealed that since August 30, 1998 there have been no major

crimes associated with the establishment and that the Applicant has taken additional steps to strengthen its security operation. Moreover, with regard to police resources, the testimony of Captain Malkin revealed police officers in his patrol sector do not patrol the establishment any more often than any other establishment in the area.

80. Based upon the above factors, and the record as a whole, the Board finds ANC 2F's recommendation opposing the renewal of the establishment's Class "CR" license on the basis that it adversely affects the peace, order, and quiet of the neighborhood does not warrant the denial of the establishment's renewal application.

81. Pursuant to D.C. Code § 25-115(b)(1)(G), the fact that the Applicant has held a license at this location since 1994 is a factor the Board considers and finds to be in the Applicant's favor. Pursuant to D.C. Code § 25-115(g)(1)(A), the Board finds the Applicant to be of good moral character, with no evidence of any criminal misconduct during the past renewal period. The Board makes this determination based upon an examination of its files and the lack of any contradictory evidence in the testimony of this proceeding.

82. The Protestants also raised several compliance issues during the protest hearing -- that were not included in ANC 2F's November 13, 1998 letter -- that are required to be considered by the Board pursuant to D.C. Code § 25-115(b)(1)(G) as factors in making its decision.

83. With regard to hours of operation, the Board finds that the establishment's permissible hours of operation are Sunday through Thursday 10:00 a.m. to 2:00 a.m. and Friday and Saturday 10:00 a.m. to 3:00 a.m. Although the Premise and Business Information Sheet part of the establishment's application lists the establishment's hours of operation as 10:00 a.m. to 2:00 a.m., Board practice is to follow the Food Statement part of the application for clarification purposes when there is a conflict because it specifically lists the establishment's planned hours of operation for each individual day of the week rather than -- in this case -- one blanket time of 10:00 a.m. to 2 a.m. Additionally, the Board finds based on the testimony of Mr. Williams, Investigator Poindexter, Mr. Toure, and Mr. Winbush that the establishment was not open past 2 a.m. on Sunday through Thursday, or 3 a.m. on Friday and Saturday and sometimes even closed earlier than required. Specifically, on Investigator Poindexter's four visits to the establishment listed in her investigative report, which occurred on Saturday nights, Investigator Poindexter did not observe the establishment staying open past 2 a.m. or serving alcohol past 1:45 a.m.

84. With regard to the issue of whether the establishment was keeping its kitchen open until at least two hours prior to closing as required under D.C. Code § 25-111(a)(7), the Board finds based on the testimony of Mr. Williams and Mr. Winbush that the kitchen normally closes at 11 p.m. -- more than two hours prior to closing. As a result, the Board finds that the applicant was not in compliance with this requirement and this is a factor the Board considered when deciding whether to renew this license. The testimony of Investigator Poindexter did reveal that the applicant is capable of meeting this statutory requirement.

85. With regard to the issue of food service provided by the establishment pursuant to

D.C. Code § 25-103(14), the testimony did reveal that the establishment holds itself out as a place where food is served, and serves both lunch and dinner. Specifically, the testimony of Officer Shirk, Lieutenant Sickon and Officer Wright showed that each of these individuals has eaten food or observed patrons eating food in the establishment. The Board finds that the establishment's lack of late-night eating patrons is not in itself a violation of ABC regulations as long as the kitchen facilities remain open until two hours prior to closing so that patrons are able to order food if they so choose.

86. The testimony of Mr. Winbush also revealed that the establishment offers a partial menu rather than a full menu on Sundays, which includes such items as chicken wings and fries. The Board finds that the establishment's use of a partial menu one day a week -- on Sunday, typically not one of the busier days in the District for restaurant business -- does not constitute a substantial change under 23 DCMR § 505, in this particular case.

87. Under D.C. Code § 25-103 (14), the Board is required to make a finding that the sale of food accounts for at least 45% of the establishment's gross annual receipts. See Upper Georgia Ave. Planning Committee v. ABC Control Board, 500 A.2d 987, 991 (D.C. 1985). In this case, testimony from Investigator Poindexter revealed that: 1) the establishment has a cook; 2) the establishment has a kitchen facility in excellent condition; 3) the establishment has a refrigerator stored with an adequate amount of food; 4) dirty dishes were present in the establishment; and 5) she observed menus in the establishment. Moreover, a review of the establishment's filed quarterly statements as required by D.C. Code § 25-111(a)(13)(D) over the past year beginning from the October 1, 1998 to December 31, 1998 quarterly period until the last protest hearing date in August 1999 (the July 1, 1999 to September 30, 1999 quarterly period) states that the 45% food requirement was met in each of the four quarterly reports. The Board accords credibility to the contents of the quarterly reports which are certified under penalty of perjury as being true and correct to the best of the Applicant's knowledge. The Board thus finds, upon the record as a whole, that the establishment meets the 45% food requirement.

88. With regard to the establishment's certificate of occupancy, the applicant does possess a certificate of occupancy for 350. However, for purposes of selling alcohol, the Board recognizes the 180 limit in the voluntary agreement and the Board's files as the maximum number of patrons the establishment may have at one time. Although there was conflicting testimony on this subject from Ms. Watson, the Board finds that the testimony of Mr. Williams, Mr. Toure, and Investigator Poindexter revealed that while 300 patrons may be in the establishment in the course of the night, it did not appear based upon the record that more than 180 patrons were in the establishment at any one time as required by the establishment's liquor license and voluntary agreement.

89. The Board finds that the establishment -- by changing its certificate of occupancy gradually from 150 to 350 -- to be in violation of the provision of the voluntary agreement requiring its occupancy permit for capacity to read "180 persons or less". The testimony did reveal that ANC 2F was not willing to change this provision of the voluntary agreement. However, the establishment should have raised the issue of its certificate of occupancy -- or any other issue related to its voluntary agreement -- with either ANC 2F or the Board rather than

ignoring the provision. The Board specifically reserves for future consideration the circumstances under which the terms of a voluntary agreement may be modified and the procedure by which such a modification is effectuated. It should be noted, however, that voluntary agreements pursuant to 23 DCMR § 1513 have no legal force or effect absent the imprimatur of affirmative Board approval. Such approval by the Board carries with it a concomitant power to modify a voluntary agreement previously approved by the Board where circumstances warrant modification. The existence of this power does not imply, however, that the exercise of such power by the Board should be undertaken lightly and without due consideration for the administration of justice.

90. A review of Board files shows that the establishment is not permitted to have live music. The testimony revealed that the establishment did have live music, a factor the Board took into consideration in making its decision. Specifically, the testimony revealed that the June 12, 1999 incident occurred on a Friday night when the establishment had a live band and allowed patrons into the establishment between the ages of 19 to 21. In fact, almost all of these incidents occurred on weekends when the establishment permitted patrons between the ages of 19 to 21 to enter the establishment.

91. A review of the July 31, 1997 amendment -- identified by both Ms. Neff and Mr. Toure -- to the February 16, 1994 voluntary agreement between the establishment and the Logan Circle Community Association requires the establishment to provide a minimum of six patrollers: two each for the 1400 blocks of Q Street and Church Street and the alley, with continuous patrolling to last a minimum of one hour before and one-hour after closing time. However, the testimony of Mr. Winbush indicated that the establishment normally has four patrollers -- rather than the required six patrollers -- working outside the establishment. This was one factor the Board considered in making its decision.

Appropriate Action

Based upon the testimony and conclusions of law above, the Board finds it necessary to place on the licensee -- as a condition to renewal of its license -- the requirement that no one under 21 be permitted into the establishment after 9:30 p.m., the time the establishment switches from a full to partial menu. Additionally, the Board reminds the Applicant that it must follow the terms of its license and voluntary agreement. The Board feels compelled to mention five of these terms. First, the Applicant as stated on its application is not permitted to have live music. Second, the Applicant's occupancy capacity is 180 as set forth in its voluntary agreement. Third, the establishment's kitchen must stay open until at least two hours prior to closing. Fourth, the Applicant's hours of operation are 10 a.m. to 2 a.m., Sunday through Thursday; and Friday and Saturday, 10 a.m. to 3:00 a.m. Fifth, the Applicant -- as stated in the July 31, 1997 amendment to its voluntary agreement -- is required to have six patrollers outside the establishment for a minimum of one hour before and one hour after closing time. The Board finds that with this added condition to the establishment's license and in requiring the Applicant to follow the existing terms on its license and voluntary agreement the establishment is appropriate for its location.

ORDER

THEREFORE, it is hereby ORDERED on this 13th day of December 2000, that the renewal application of Capitol Ventures I, LP, t/a Diversite for a Retailer's Class "CR" license, for premises located at 1526 14th Street, N.W., Washington, D.C., be and is hereby GRANTED;

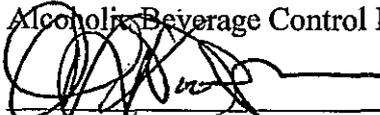
AND IT IS FURTHER ORDERED that the Applicant must follow the terms of its license and voluntary agreement which among its terms specify that:

1. The Applicant's permitted occupancy capacity is 180;
2. The Applicant's permitted hours of operation are Sunday through Thursday 10 a.m. to 2 a.m., and Friday and Saturday 10 a.m. to 3:00 a.m.;
3. The Applicant is not permitted to have live music;
4. The establishment's kitchen must stay open and be able to serve food until at least two hours prior to closing;
5. The Applicant is required to have six patrollers outside the establishment for a minimum of one hour before and one hour after closing time;

AND IT IS FURTHER ORDERED that the following condition is hereby imposed on the Applicant and shall become a term of its license:

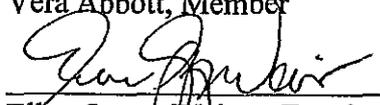
1. No one under 21 is permitted inside in the establishment after 9:30 p.m.

District of Columbia
Alcoholic Beverage Control Board

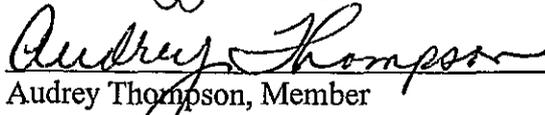


Roderic L. Woodson, Esquire, Chairperson

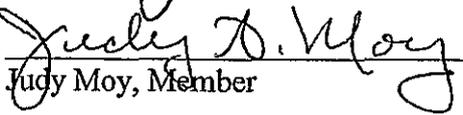
Vera Abbott, Member



Ellen Oppet-Weiner, Esquire, Member



Audrey Thompson, Member



Judy Moy, Member

Charles A. Burger
Charles Burger, Member

Pursuant to 23 DCMR § 1619.1 (June 1997), any party adversely affected may file with the Alcoholic Beverage Control Division, Department of Consumer and Regulatory Affairs, 941 North Capitol Street, N.E., Room 7159, Washington, D.C. 20002, a Motion for Reconsideration of this decision within ten (10) days of service of this Order.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Code § 1-1510 (1999), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a motion for reconsideration pursuant to 23 DCMR § 1619.1 stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b).

710810000
970923001

32860

VOLUNTARY AGREEMENT BETWEEN
RESIDENTS OF THE 1400 BLOCK OF Q STREET AND
CAPITOL VENTURES I LTD. PARTNERSHIP/DIVERSITE RESTAURANT

(To supplement current agreement with the Logan Circle Community Association, Inc. District of Columbia Alcoholic Beverage Control License Class CR #32862.)

This voluntary agreement is made on July 31, 1997, between the neighbors of the 1400 block of Q Street, N.W. (the "Neighbors"), and Capitol Ventures I, L.P. (the "Applicant"), owner and operator of Diversite Restaurant, located at 1526 14th Street, N.W. (the "Premises").

1. In addition to any cleaning and patrolling specified on any other agreement, the Applicant shall provide patrolling on Q and Church Streets, on nights in which there are activities scheduled at the Premises. The patrolling will be continuous, and last for a minimum of one hour before and one hour after closing time. The security patrol shall be in the form of off-duty District of Columbia Police officers. The Applicant shall provide a minimum of 6 (six) patrollers, two each for the 1400 blocks of Q Street, Church Street and the alley in between. The patrollers will be on foot and walk the block back and forth to ensure that customers leaving the Premises do not loiter, litter or produce unreasonable noise. The purpose of the patrolling is that customers leave the area as quietly and rapidly as possible so that there is no interference with peace and quiet in the middle of the night
2. The Applicant shall post conspicuous signs in the Premises advising patrons that they are in a residential neighborhood and asking them to be considerate when outdoors. Also, there shall be spoken announcements prior to closing in which patrons are to be alerted of this.
3. This Voluntary Agreement shall become a part of the conditions for the ABC license. It shall be binding and enforceable during the term of the license to which the agreement applies. A violation of this agreement may be cause for the neighbors to request the ABC Board to take action against the Applicant.
4. In consideration of the foregoing, the neighbors hereby withdraw their protest of the Application.

For Capitol Ventures I Limited Partnership:

[Handwritten signature]

John Sweeney
9/14/97

For the Neighbors of the 1400 block of Q Street, NW:

James A. Clark *JAMES A. CLARK*

Arcadio J. Garcia
Walter...
...
...

FOR ANC 2F

970312003

32862

VOLUNTARY AGREEMENT BETWEEN
RESIDENTS OF THE 1400 BLOCK OF O STREET AND
CAPITOL VENTURES I LTD. PARTNERSHIP/DIVERSITE RESTAURANT

To supplement current agreement with the Logan Circle Community Association, Inc. (the ABC) (Voluntary Alcoholic Beverage Control License Class CR #42862.)

This voluntary agreement was made on July 21, 1997, between the residents of the 1400 block of O Street, N.W. and Neighbors and Capitol Ventures I, L.P. (the restaurant owner and operator of Diversite Restaurant located at 1526 14th Street, N.W. the "Premises")

Under current zoning and use of land specified on any other document, the Applicant had a right to put a sign on O and Church Streets on right side of the lot. The parties agree that the sign will be removed from the lot prior to the opening of the restaurant and no new sign shall be put on the lot in the form of a sign. The Applicant shall be responsible for the sign and shall be responsible for the sign. The Applicant shall be responsible for the sign and shall be responsible for the sign. The Applicant shall be responsible for the sign and shall be responsible for the sign.

The Applicant shall be responsible for the sign and shall be responsible for the sign. The Applicant shall be responsible for the sign and shall be responsible for the sign. The Applicant shall be responsible for the sign and shall be responsible for the sign.

The Applicant shall be responsible for the sign and shall be responsible for the sign. The Applicant shall be responsible for the sign and shall be responsible for the sign. The Applicant shall be responsible for the sign and shall be responsible for the sign.

[Faint signature and stamp area]

[Handwritten signature]
D. D. D. D. D.

ALCOHOLIC BEVERAGE CONTROL
VOLUNTARY AGREEMENT
Premises Address: 1526 14th Street, N.W.
Application Number: (New) 32862
Roll Call Date: February 9, 1994
License Class: "CR"

32862

This Voluntary Agreement (the "Agreement") is made this 16 day of February, 1994, by and between the Logan Circle Community Association, Inc., a not-for-profit District of Columbia corporation, on behalf of itself and as a representative of the neighborhood (hereinafter, the "Protestants"), and Capitol Ventures I Limited Partnership, a District of Columbia Limited Partnership (hereinafter, the "Applicant"), for a new District of Columbia Alcoholic Beverage Control License Class "CR" (the "Liquor License") at premises located at 1526 14th Street, N.W., Washington, D.C. (the "Establishment"). The principal offices of the above parties to this Agreement are listed in the "Notices" section of this Agreement.

WITNESSETH

WHEREAS, the Applicant proposes to own and operate a restaurant known as "Diversite" at 1526 14th Street, N.W., Washington, D.C.; and

WHEREAS, pending before the District of Columbia Alcoholic Beverage Control Board (the "ABC Board") is the Applicant's application number 37862 for a new Liquor License for the Establishment; and

WHEREAS, the Logan Circle Community Association has filed a 14(b) protest before the ABC Board; and

WHEREAS, the parties to this Agreement desire to resolve the protest in the manner hereinafter provided;

NOW, THEREFORE, in consideration of the Establishment recited above and the covenants and promises set forth below, the parties agree as follows:

1. PARKING. The Applicant shall maintain parking for the Establishment at the ratio of one (1) parking space for every three (3) patrons as noted on the Certificate of Occupancy, the Restaurant License, and the ABC Board License. The amount of parking to be provided is 60 parking spaces. This parking may be in the form of valet parking or park and lock parking, and shall be located within five hundred (500) walking feet of the front entry of the Establishment. For the purposes of calculation of the number of on-site parking spaces, the Applicant shall have an on-site credit of 15 parking spaces. The Applicant shall provide off-site parking either free or at nominal fee (not to exceed \$3.00), and shall have a sign posted at the front entrance to the Establishment giving specific directions to the on-site and off-site parking, and noting its fee to park, if any, on the sign. The Applicant shall maintain the off-site parking for the duration of its Liquor License. The Applicant shall provide a copy of any lease or rental agreement for off-site parking to the Protestants, in the amount of 45 parking spaces. In the event of cancellation of any lease or rental agreement for parking, the Applicant shall immediately notify the Protestants, and the Applicant shall immediately lease or rent other off-site parking within 30 days, and shall send a copy of the lease or rental agreement to the Protestants. The parking is to be available whenever the Establishment is open for business exclusively for patrons during evening hours after 6:00 P.M. The parking areas are to be kept clean. On-site and off-site parking is to be lighted at night. Off-site parking is to be secure (fenced and locked) when not in use.
2. Rat and vermin control. The Applicant shall provide rat and vermin control to its loading, unloading and trash dumpster area.

3. Alley cleaning and patrolling on a continuous basis. The Applicant shall provide alley cleaning and front of the Establishment cleaning on a daily basis. The applicant shall provide frequent alley patrolling, especially at night, on a daily basis.
4. Security within and outside the establishment. The Applicant shall provide internal security for after dinner hours (past 10:00 P.M.) and outside security from 7:30 P.M. to closing. Outside security shall be in the form of off-duty District of Columbia Police officers. On Friday and Saturday evenings there shall be a minimum of two (2) outside security personnel.
5. Prohibition on drug use by posting and prosecution of violators by the owners of the establishment. The Applicant shall post conspicuous signage in each rest room in the Establishment and on the front door of the Establishment.
6. Deliveries and trash located away from the residential alley. The Applicant shall not use the alley at any time for deliveries, and shall not at any time transport trash from any exit via the alley. The Applicant shall not stage any trash pickup at any time from the alley. The alley exit from the Establishment is to be marked from the inside "Emergency Exit Only". This exit is not to be used by the Applicant or its patrons at any time other than as an emergency exit. The Applicant shall provide for legal enclosure of the small vestibule located at the alley emergency exit, and shall provide lighting to discourage crime in the vicinity of the alley exit. Trash dumpsters are to be located on the Church Street side of the building or internal to the building accessed from the Church Street side of the building only. Deliveries are to be made at the 14th Street frontage or on the Church Street side of the building.
7. Capacity. The Applicant shall at all times adhere to its occupancy request for 180 patrons. At no time will the number of occupants be an amount greater than 180 patrons. The restaurant license and occupancy permit license and capacity placards shall state the occupancy limit to be 180 patrons or less.
8. No video bar shall be permitted.
9. No Dancing by patrons or employees shall be permitted.
10. Noise. The Applicant staged a sound test at the request of the Protestants. The results of the sound test were inconclusive, based upon the fact that the Establishment is still under construction. The Applicant shall conduct a new sound test after it has insulated the alley walls and provided solid masonry at the abandoned window openings and other penetrations. The Applicant shall execute an addendum to this Voluntary Agreement at the conclusion of the sound test to be made at the conclusion of its construction activity which shall state: "The sound level taken at the center line of the alley beginning 75 feet from the building edge fronting on 14th Street, and also taken at 50 foot intervals thereafter to the end of the building, shall not exceed ___ decibels at any time from noise generated from the Establishment." The Protestants will insert the maximum acceptable decible level as a result of that test, and will file the executed Addendum with the ABC Board. The Applicant shall at all times maintain a noise level of that reading or less.
11. Staging. The Applicant shall stage the patrons waiting for seating inside, not outside.
12. Window treatment at the front of the Establishment. The Applicant shall re-glaze the bay window and above window with glass, and not a solid material as now installed.
13. Conditions of Liquor License. The Applicant will adhere to the conditions of the license for the Establishment herein contained, and it is understood that the provisions of this Voluntary Agreement shall become a part of the conditions of

the license. Failure of the Applicant to correct any violations of the conditions of the license within thirty (30) days shall be just cause by the ABC Board to suspend or revoke the license.

- 14. Withdrawal of Protest. The Protestants hereby withdraw their protest of the Application and agrees to provide whatever further evidence of said withdrawal that may be required by the ABC Board.
- 15. Binding Effect. This Voluntary Agreement shall be binding upon and enforceable against the successors and assigns of the Applicant during the term of the license to which the Voluntary Agreement applies.
- 16. Notices. Any notices required to be made under this Agreement shall be in writing and mailed by Certified Mail, return receipt requested, postage prepaid, to the other parties to this Agreement. Notice is deemed to be received upon mailing. Notice is to be given as follows:

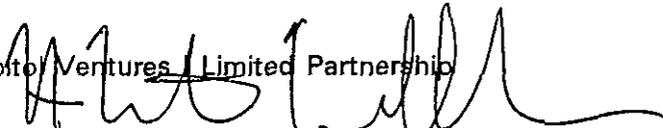
a. If to the Applicant, to:

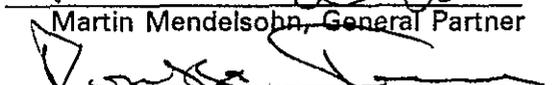
Capitol Ventures I Limited Partnership
c/o Martin Mendelsohn, General Partner and
Moussa Toure, General Partner
1526 14th Street, N.W.
Washington, D.C. 20009

b. If to the Protestants, to:

President, Logan Circle Community Association, Inc.
P. O. Box 12007
Washington, D.C. 20005

IN WITNESS WHEREOF, the parties have executed this Voluntary Agreement as of the day and year first above written.

Capitol Ventures I Limited Partnership
by: 
Martin Mendelsohn, General Partner

by: 
Moussa Toure, General Partner

Logan Circle Community Association, Inc.

by: 
James F. Smith, Chairperson, Land Use,
Planning & Development Committee